

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 127

HOUSE BILL 2242

AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO
REVERSE MORTGAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 6, Arizona Revised Statutes, is amended by adding chapter 16, to read:

CHAPTER 16

REVERSE MORTGAGES

ARTICLE 1. GENERAL PROVISIONS

6-1601. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AGREEMENT" MEANS THE DOCUMENT THAT ON EXECUTION OBLIGATES THE BORROWER AND ORIGINATOR UNDER THE REVERSE MORTGAGE.

2. "DWELLING" MEANS A RESIDENCE THAT IS DESIGNED PRINCIPALLY FOR AT LEAST ONE AND NOT MORE THAN FOUR FAMILIES IN WHICH THE BORROWER OCCUPIES AT LEAST ONE OF THE UNITS.

3. "HOUSING COUNSELING AGENCY" MEANS AN AGENCY THAT IS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO PROVIDE REVERSE MORTGAGE COUNSELING.

4. "ORIGINATOR" MEANS A PERSON WHO REGULARLY MAKES OR BROKERS REVERSE MORTGAGES, INCLUDING A CREDITOR OR BROKER.

5. "REVERSE MORTGAGE" MEANS A NONRECOURSE CONSUMER CREDIT OBLIGATION TO WHICH ALL OF THE FOLLOWING APPLY:

(a) A MORTGAGE, DEED OF TRUST OR EQUIVALENT CONSENSUAL SECURITY INTEREST SECURING ONE OR MORE ADVANCES IS CREATED IN THE BORROWER'S PRINCIPAL DWELLING.

(b) ANY PRINCIPAL, INTEREST OR SHARED APPRECIATION OR EQUITY IS DUE AND PAYABLE ONLY AFTER THE BORROWER DIES, THE DWELLING IS TRANSFERRED OR THE BORROWER CEASES TO OCCUPY THE DWELLING AS A PRINCIPAL DWELLING. THIS SUBDIVISION DOES NOT APPLY IN THE CASE OF DEFAULT.

(c) CASH ADVANCES MAY BE PROVIDED TO A BORROWER:

(i) BASED ON THE EQUITY OR THE VALUE IN THE BORROWER'S OWNER OCCUPIED PRINCIPAL RESIDENCE.

(ii) IF LOAN PROCEEDS ARE USED BY THE BORROWER TO PURCHASE THE BORROWER'S DWELLING THAT SECURES THE REVERSE MORTGAGE.

(d) THE CONSUMER CREDIT OBLIGATION IS NOT A HOME EQUITY CONVERSION MORTGAGE INSURED BY THE FEDERAL HOUSING AUTHORITY.

6-1602. Financial counseling; counselor requirements

A. ADEQUATE COUNSELING UNDER THIS CHAPTER MUST BE PROVIDED BY A COUNSELOR WHO IS AN INDEPENDENT THIRD PARTY.

B. TO QUALIFY AS AN INDEPENDENT THIRD PARTY, THE COUNSELOR MAY NOT BE ASSOCIATED WITH OR COMPENSATED, DIRECTLY OR INDIRECTLY, BY A PARTY INVOLVED IN ANY OF THE FOLLOWING:

1. ORIGINATING OR SERVICING THE REVERSE MORTGAGE.

2. FUNDING THE LOAN UNDERLYING THE REVERSE MORTGAGE.

3. SELLING ANNUITIES, INVESTMENTS, LONG-TERM CARE INSURANCE OR ANY OTHER TYPE OF FINANCIAL OR INSURANCE PRODUCT.

1 C. COUNSELING SERVICES REQUIRED PURSUANT TO THIS CHAPTER SHALL BE
2 PROVIDED BY HOUSING COUNSELING AGENCIES AND BY COUNSELORS WHO FOLLOW UNIFORM
3 COUNSELING PROTOCOLS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND
4 URBAN DEVELOPMENT.

5 6-1603. Required disclosures: counseling

6 A. BEFORE ACCEPTING A FINAL AND COMPLETE APPLICATION FOR A REVERSE
7 MORTGAGE OR ASSESSING ANY FEES, THE ORIGINATOR SHALL:

8 1. PROVIDE THE BORROWER WITH A LIST OF AT LEAST FIVE HOUSING
9 COUNSELING AGENCIES, INCLUDING AT LEAST TWO HOUSING COUNSELING AGENCIES THAT
10 CAN PROVIDE COUNSELING BY TELEPHONE.

11 2. RECEIVE FROM THE BORROWER OR THE BORROWER'S AUTHORIZED
12 REPRESENTATIVE A CERTIFICATION THAT THE BORROWER HAS RECEIVED COUNSELING FROM
13 A HOUSING COUNSELING AGENCY. THE CERTIFICATION SHALL BE SIGNED BY THE
14 BORROWER AND THE HOUSING COUNSELING AGENCY COUNSELOR AND SHALL INCLUDE THE
15 DATE OF THE COUNSELING AND THE NAME AND ADDRESS OF BOTH THE COUNSELOR AND THE
16 BORROWER. THE DATE ON THE CERTIFICATION MUST SHOW THAT THE COUNSELING
17 OCCURRED WITHIN THE SIX MONTHS PRECEDING THE BORROWER ACCEPTING A FINAL AND
18 COMPLETE APPLICATION FOR A REVERSE MORTGAGE. AN ELECTRONIC COPY OF THE
19 HOUSING COUNSELING CERTIFICATION SATISFIES THE REQUIREMENTS OF THIS
20 PARAGRAPH. THE ORIGINATOR SHALL MAINTAIN THE CERTIFICATION IN AN ACCURATE,
21 REPRODUCIBLE AND ACCESSIBLE FORMAT FOR THE TERM OF THE REVERSE MORTGAGE.

22 B. AT LEAST TEN DAYS BEFORE LOAN CLOSING, THE ORIGINATOR SHALL MAKE
23 AVAILABLE TO THE BORROWER A STATEMENT INFORMING THE BORROWER THAT THE
24 BORROWER'S LIABILITY UNDER THE REVERSE MORTGAGE IS LIMITED AND EXPLAINING THE
25 BORROWER'S RIGHTS, OBLIGATIONS, REMEDIES WITH RESPECT TO TEMPORARY ABSENCES
26 FROM THE HOME, LATE PAYMENTS AND PAYMENT DEFAULT BY THE ORIGINATOR AND ALL
27 CONDITIONS REQUIRING SATISFACTION OF THE LOAN OBLIGATION.

28 C. BEFORE ENTERING INTO A REVERSE MORTGAGE, AN ORIGINATOR SHALL FULLY
29 DISCLOSE IN WRITING:

30 1. ALL COSTS CHARGED BY THE ORIGINATOR, INCLUDING COSTS OF ESTATE
31 PLANNING, FINANCIAL ADVICE AND OTHER SERVICES THAT ARE RELATED TO THE REVERSE
32 MORTGAGE BUT THAT ARE NOT REQUIRED TO OBTAIN THE REVERSE MORTGAGE. THE
33 DISCLOSURE SHALL CLEARLY IDENTIFY WHICH CHARGES ARE REQUIRED TO OBTAIN THE
34 REVERSE MORTGAGE AND WHICH CHARGES ARE NOT REQUIRED TO OBTAIN THE REVERSE
35 MORTGAGE.

36 2. ALL TERMS AND PROVISIONS WITH RESPECT TO INSURANCE, REPAIRS,
37 ALTERATIONS, PAYMENT OF TAXES, DEFAULT RESERVE, DELINQUENCY CHARGES,
38 FORECLOSURE PROCEEDINGS, ANTICIPATION OF MATURITY AND ANY ADDITIONAL AND
39 SECONDARY LIENS.

40 3. THE PROJECTED TOTAL COST OF THE REVERSE MORTGAGE TO THE BORROWER
41 BASED ON THE PROJECTED TOTAL FUTURE LOAN BALANCE FOR AT LEAST TWO PROJECTED
42 LOAN TERMS. THIS STATEMENT SHALL INCLUDE:

43 (a) THE COST FOR A SHORT-TERM MORTGAGE.

44 (b) THE COST FOR A LOAN TERM EQUALING THE ACTUARIAL LIFE EXPECTANCY OF
45 THE BORROWER.

1 6-1604. Reverse mortgage: provisions

2 A. A REVERSE MORTGAGE MAY PROVIDE FOR A FIXED OR VARIABLE INTEREST
3 RATE OR FUTURE SHARING BETWEEN THE ORIGINATOR AND THE BORROWER OF THE
4 APPRECIATION IN THE VALUE OF THE PROPERTY, AS AGREED ON BY THE ORIGINATOR AND
5 THE BORROWER.

6 B. THE REVERSE MORTGAGE AGREEMENT SHALL PROMINENTLY DISCLOSE ANY
7 INTEREST RATE OR OTHER FEES TO BE CHARGED DURING THE PERIOD THAT BEGINS ON
8 THE DATE THAT THE REVERSE MORTGAGE BECOMES DUE AND PAYABLE AND THAT ENDS WHEN
9 REPAYMENT IN FULL IS MADE.

10 C. THE REVERSE MORTGAGE MAY PROVIDE FOR A SINGLE LUMP SUM DISBURSAL OF
11 MONIES OUT OF HOME PURCHASE PROCEEDS AND SHALL PROVIDE FOR FUTURE PAYMENTS TO
12 THE BORROWER BASED ON ACCUMULATED EQUITY MINUS ANY APPLICABLE FEES AND
13 CHARGES ACCORDING TO THE METHOD THAT THE BORROWER SELECTS FROM AMONG THE
14 FOLLOWING:

15 1. BASED ON A LINE OF CREDIT.

16 2. ON A MONTHLY BASIS OVER A TERM SPECIFIED BY THE BORROWER.

17 3. ON A MONTHLY BASIS OVER A TERM SPECIFIED BY THE BORROWER AND BASED
18 ON A LINE OF CREDIT.

19 4. ON A MONTHLY BASIS OVER THE TENURE OF THE LOAN.

20 5. ON A MONTHLY BASIS OVER THE TENURE OF THE LOAN AND BASED ON A LINE
21 OF CREDIT.

22 D. EXCEPT IN THE CASE OF A FIXED RATE REVERSE MORTGAGE, THE PROCEEDS
23 OF WHICH ARE FULLY DISBURSED AT CLOSING, THE REVERSE MORTGAGE SHALL PROVIDE
24 THAT THE BORROWER MAY CONVERT THE METHOD OF PAYMENT UNDER THIS SECTION TO ANY
25 OTHER METHOD OFFERED BY THE LENDER DURING THE TERM OF THE REVERSE MORTGAGE.

26 E. THE REVERSE MORTGAGE SHALL CONTAIN RESTRICTIONS THAT ENSURE THE
27 BORROWER DOES NOT FUND ANY UNNECESSARY COSTS FOR OBTAINING THE REVERSE
28 MORTGAGE, INCLUDING ANY COSTS OF ESTATE PLANNING, FINANCIAL ADVICE OR OTHER
29 RELATED SERVICES. THIS SUBSECTION DOES NOT APPLY TO COUNSELING FEES PAID TO
30 A COUNSELOR WHO IS QUALIFIED UNDER SECTION 6-1602.

31 F. A BORROWER'S PRINCIPAL DWELLING SECURING A REVERSE MORTGAGE MAY BE
32 HELD IN TRUST OR MAY BE AN INTEREST UNDER A LIFE ESTATE OR A LONG-TERM LEASE.

33 G. THE ORIGINATOR SHALL MAKE AVAILABLE TO THE BORROWER ON AN ANNUAL
34 BASIS NOT LATER THAN JANUARY 31 A STATEMENT SUMMARIZING THE TOTAL PRINCIPAL
35 AMOUNT PAID TO THE BORROWER UNDER THE LOAN SECURED BY THE REVERSE MORTGAGE,
36 THE TOTAL AMOUNT OF DEFERRED INTEREST ADDED TO THE PRINCIPAL AND THE
37 OUTSTANDING LOAN BALANCE AT THE END OF THE PRECEDING YEAR.

38 6-1605. Prepayment: repayment conditions

39 A. PREPAYMENT, IN WHOLE OR IN PART, SHALL BE PERMITTED WITHOUT PENALTY
40 AT ANY TIME DURING THE TERM OF A REVERSE MORTGAGE.

41 B. FOR THE PURPOSES OF THIS SECTION, PENALTY DOES NOT INCLUDE:

42 1. ANY FEES, PAYMENTS OR OTHER CHARGES THAT WOULD OTHERWISE BE DUE
43 WHEN THE REVERSE MORTGAGE BECOMES DUE AND PAYABLE.

44 2. ANY CLOSING COSTS THAT THE AGREEMENT STATES ARE OWED BY THE
45 BORROWER IF THE BORROWER REPAYS THE REVERSE MORTGAGE IN WHOLE BEFORE THE DATE

1 IN THE AGREEMENT, IF THE REPAYMENT OCCURS WITHIN FIVE YEARS AFTER THE DATE ON
2 WHICH THE AGREEMENT WAS MADE.

3 C. A REVERSE MORTGAGE BECOMES DUE AND PAYABLE IF ANY OF THE FOLLOWING
4 APPLIES:

5 1. THE PROPERTY IS NOT THE PRINCIPAL RESIDENCE OF AT LEAST ONE
6 BORROWER.

7 2. A BORROWER CONVEYS ALL OF THE BORROWER'S TITLE IN THE PROPERTY AND
8 NO OTHER BORROWER RETAINS TITLE.

9 3. FOR A PERIOD OF LONGER THAN TWELVE CONSECUTIVE MONTHS, A BORROWER
10 FAILS TO OCCUPY THE PROPERTY BECAUSE OF PHYSICAL OR MENTAL ILLNESS AND THE
11 PROPERTY IS NOT THE PRINCIPAL RESIDENCE OF AT LEAST ONE OTHER BORROWER.

12 4. A BORROWER DOES NOT PERFORM AN OBLIGATION UNDER THE MORTGAGE.

13 D. A REVERSE MORTGAGE DOES NOT BECOME DUE AND PAYABLE IF THE LEGAL
14 TITLE TO THE PROPERTY IS HELD IN THE NAME OF A TRUST AND THE OCCUPANT OF THE
15 PROPERTY USES THE PROPERTY AS A PRINCIPAL RESIDENCE AND IS A BENEFICIARY OF
16 THAT TRUST.

17 E. THE CREDITOR'S OR THE CREDITOR'S ASSIGNEE'S RIGHT TO COLLECT THE
18 OUTSTANDING BALANCE OF THE REVERSE MORTGAGE UNDER THE LOAN IS SUBJECT TO THE
19 APPLICABLE STATUTE OF LIMITATIONS FOR WRITTEN LOAN CONTRACTS.
20 NOTWITHSTANDING ANY OTHER LAW, THE STATUTE OF LIMITATIONS BEGINS ON EITHER OF
21 THE FOLLOWING:

22 1. THE DATE THAT THE REVERSE MORTGAGE BECOMES DUE AND PAYABLE AS
23 SPECIFIED IN THE AGREEMENT.

24 2. THE DATE THE CREDITOR OR THE CREDITOR'S ASSIGNEE ACCELERATES THE
25 LOAN DUE TO THE BORROWER'S DEFAULT ON A PROVISION IN THE AGREEMENT.

26 6-1606. Borrower liability; prohibited practices; investments;
27 annuities

28 A. THE BORROWER IS NOT LIABLE FOR ANY DIFFERENCE BETWEEN THE NET
29 AMOUNT OF THE BORROWER'S REMAINING DEBT UNDER THE REVERSE MORTGAGE AND THE
30 AMOUNT RECOVERED BY THE ORIGINATOR FROM THE NET SALES PROCEEDS FROM THE
31 DWELLING THAT IS SUBJECT TO THE REVERSE MORTGAGE. THIS AMOUNT IS BASED ON
32 THE AMOUNT OF THE ACCUMULATED EQUITY SELECTED BY THE BORROWER TO BE SUBJECT
33 TO THE REVERSE MORTGAGE AS AGREED ON BY THE ORIGINATOR AND THE BORROWER.

34 B. AN ORIGINATOR SHALL NOT:

35 1. ENTER INTO ANY AGREEMENT THAT WOULD OBLIGATE THE BORROWER TO
36 PURCHASE AN ANNUITY, AN INVESTMENT OR LONG-TERM CARE INSURANCE BEFORE THE
37 CLOSING OF THE REVERSE MORTGAGE OR BEFORE THE EXPIRATION OF THE BORROWER'S
38 RIGHT TO RESCIND THE REVERSE MORTGAGE AGREEMENT IF A RESCISSION PERIOD
39 APPLIES.

40 2. REFER THE BORROWER TO ANYONE FOR THE PURCHASE OF AN ANNUITY BEFORE
41 THE CLOSING OF THE REVERSE MORTGAGE OR BEFORE THE EXPIRATION OF THE
42 BORROWER'S RIGHT TO RESCIND THE REVERSE MORTGAGE AGREEMENT.

1 C. THIS SECTION DOES NOT PREVENT A LENDER FROM OFFERING OR REFERRING
2 BORROWERS FOR TITLE INSURANCE, HAZARD, FLOOD OR OTHER PERIL INSURANCE OR
3 OTHER SIMILAR PRODUCTS THAT ARE CUSTOMARY AND NORMAL UNDER A REVERSE MORTGAGE
4 LOAN.

5 6-1607. Enforcement

6 A. AN ACT OR PRACTICE IN VIOLATION OF THIS CHAPTER IS AN UNLAWFUL
7 PRACTICE UNDER SECTION 44-1522 AND IS SUBJECT TO ENFORCEMENT THROUGH PRIVATE
8 ACTION AND PROSECUTION BY THE ATTORNEY GENERAL.

9 B. ANY PROVISION OF A REVERSE MORTGAGE AGREEMENT THAT VIOLATES THIS
10 CHAPTER IS UNENFORCEABLE AGAINST THE BORROWER.

11 C. A PRIVATE ACTION AGAINST AN ORIGINATOR SHALL BE COMMENCED SUBJECT
12 TO THE APPLICABLE STATUTE OF LIMITATIONS FOR WRITTEN CONTRACTS.

13 D. THE REMEDIES PROVIDED IN THIS CHAPTER ARE NOT INTENDED TO BE THE
14 EXCLUSIVE REMEDIES AVAILABLE TO THE BORROWER.

15 6-1608. Lien priority and validity

16 THE FULL AMOUNT SECURED BY A REVERSE MORTGAGE SECURITY INTEREST HAS THE
17 SAME PRIORITY OVER ANY OTHER LIEN ON THE PROPERTY AS IF THE FULL AMOUNT HAD
18 BEEN DISBURSED ON THE DATE OF THE LOAN CLOSING REGARDLESS OF THE ACTUAL DATE
19 OF ANY DISBURSEMENT. THE AMOUNT SECURED BY THE SECURITY INTEREST SHALL
20 INCLUDE ALL DIRECT PAYMENTS BY THE BORROWER TO THE CREDITOR OR THE CREDITOR'S
21 ASSIGNEE AND ALL OTHER LOAN ADVANCES PERMITTED BY THE MORTGAGE FOR ANY
22 PURPOSE INCLUDING LOAN ADVANCES FOR INTEREST, TAXES AND SPECIAL ASSESSMENTS,
23 PREMIUMS FOR HAZARD OR MORTGAGE INSURANCE, SERVICING CHARGES AND COSTS OF
24 COLLECTION, REGARDLESS OF WHEN THE PAYMENTS OR LOAN ADVANCES ARE MADE. THE
25 PRIORITY PROVIDED BY THIS SECTION APPLIES NOTWITHSTANDING ANY OTHER LAW.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.